

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DONDI LAROY RICE, JR.,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DONDI LAROY RICE,

Respondent-Appellant,

and

BRIDGETT MARIE MOSS,

Respondent.

UNPUBLISHED

August 9, 2005

No. 260348

Wayne Circuit Court

Family Division

LC No. 91-295911-NA

Before: Zahra, P.J., and Gage and Murray, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to the minor child, under MCL 712A.19b(3)(g) and (h). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent-appellant argues that the lower court erred when it found statutory grounds for termination. We review for clear error a trial court's decision that clear and convincing evidence supported a statutory ground for termination of parental rights. MCR 3.977(J); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). A petitioner must establish at least one statutory ground for termination of parental rights by clear and convincing evidence. *In re JK, supra* at 210. A trial court's factual findings are clearly erroneous if, although some evidence exists to support the findings, we are left with a definite and firm conviction that a mistake has been made. *In re Pardee*, 190 Mich App 243, 250; 475 NW2d 870 (1991).

The trial court clearly erred in finding that clear and convincing evidence established a violation of MCL 712A.19b(3)(h). The termination hearing in this case occurred on September 10, 2004. Respondent-appellant was incarcerated and eligible for parole beginning on February 11, 2005. The focus of subsection (h)¹ is "whether the imprisonment will deprive a child of a normal home for two years in the future, and not whether past incarceration has already deprived the child of a normal home." *In re Perry*, 193 Mich App 648, 650; 484 NW2d 768 (1992), quoting *In re Neal*, 163 Mich App 522, 527; 414 NW2d 916 (1987). Respondent-appellant was eligible for parole less than two years from the time of the termination hearing and, therefore, the statutory grounds for termination under subsection (h) were not fulfilled.

However, the trial court did not clearly err in finding that MCL 712A.19b(3)(g) was established by clear and convincing evidence. The evidence established that respondent-appellant had been incarcerated since before the child was born and had never met the child or provided the child with any form of support. Moreover, considering respondent-appellant's significant criminal history and failure to complete his parent/agency agreement, he would not be in a position to immediately care for his son when he was released from prison. At the time of the termination hearing, the child was nearly three years old and had been in foster care since he was approximately four months old. The trial court did not clearly err by finding that respondent-appellant failed to provide proper care and custody for the child.

Further, the evidence established that termination of respondent-appellant's parental rights was clearly in the best interests of the child. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Respondent-appellant never met the child, and therefore the child did not have a bond with him. Respondent-appellant also failed to support the child in any way and has not offered any evidence to prove that he will be able to provide proper care and custody for the child when he is no longer incarcerated. Furthermore, respondent-appellant has an extensive criminal history, including multiple felonies. Therefore, the trial court did not clearly err by finding that termination of respondent-appellant's parental rights were in the best interests of the child.

Affirmed.

/s/ Brian K. Zahra
/s/ Hilda R. Gage
/s/ Christopher M. Murray

¹ Subsection h was formerly subsection e.